

BRICE -- Appln. No.: 09/596,081

REMARKS

Reconsideration and the timely allowance of the pending claims, in view of the following remarks, are respectfully requested.

In the pending Office Action, the Examiner rejected claim 1 under 35 U.S.C. §§ 112 as being indefinite and 102(b) as being anticipated by U.S. Pat. No. 5,499,421 to Brice ("the '421 patent"), and claim 2 under 35 U.S.C. § 103(a) as being unpatentable over the '421 patent in view of U.S. Pat. No. 5,875,510 to Lamond et al. ("the '510 patent").

Prior to the entry of this Amendment, claims 1 and 2 were submitted for examination. By this Amendment, Applicant has: amended the Specification as filed, without introducing new matter; cancelled claim 1 without prejudice; amended claim 2 to provide a clearer presentation of the claimed invention, without introducing new matter; and presented new claims 3-9, which find support in the Specification as filed. Accordingly, claims 2-9 are submitted for examination, of which claim 2 is independent.

Applicant respectfully traverses the rejections under 35 U.S.C. §§ 112, 102(b), and 103(a) for the reasons presented herein.

1. **Drawings**

Formal drawings will be filed. Applicant has been so advised and will employ the services of a competent draftsman outside the U.S. Patent and Trademark Office.

2. **Rejections Under 35 U.S.C. §§ 112 and 102**

Claim 1 was rejected under 35 U.S.C. §§ 112 as being indefinite and 102(b) as being anticipated by the '421 patent. Applicant has cancelled claim 1 without prejudice.

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As such, Applicant respectfully traverses the rejections. Applicant, however, will file a continuation application to amplify and more fully explain the additional unclaimed subject matter of the subject application and continue examination of cancelled claim 1.

3. Rejection Under 35 U.S.C. § 103

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the '421 patent in view of the '510 patent. The Examiner reported that the '421 patent discloses all the subject matter recited in claim 2, except the handle including a cavity therein and a resilient thumb contact inserted in the cavity. The Examiner also reported that the '510 patent discloses a toothbrush (FIG. 1) including a handle (4) with a cavity (24) therein and a resilient pad (20) inserted in the cavity (24).

In addition, the Examiner reported that resilient pads, as disclosed in the '510 patent, are known to be provided with toothbrush handles to increase the grip of the user. As such, the Examiner reported that it would have been obvious to one skilled in the art to provide the handle of the '421 patent with a cavity and a resilient pad therein, as the '510 patent "clearly" suggests, to increase the grip of the user.

Applicant respectfully traverses the rejection. Not only does the '421 patent and the '510 patent not identically disclose each and every feature of Applicant's amended claim, but also such references, analyzed individually or in combination, fail to teach or suggest modifying any apparatus therein as to change its configuration to include the claimed features. Thus, such references cannot be construed as rendering obvious the claimed invention.

Amended independent claim 2 includes, in combination, (among other limitations): an elongated handle including a first end and a second end, and a cavity

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therein; a resilient thumb contact structure inserted in the cavity; a first neck extending from the second end of the elongated handle, having a proximal end attached to the elongated handle and having a distal end; a second neck extending from the second end of the elongated handle, having a proximal end attached to the elongated handle and having a distal end; a first bristle support attached to the distal end of the first neck; and a second bristle support attached to the distal end of the second neck.

The '510 patent, on the one hand, discloses a replaceable head toothbrush having a handle 4, a single brushhead 2, and a single base 6, from which bristle tufts 8 project. (FIG. 1; Abstract; col. 3, lines 25-28). The '510 patent also discloses that the handle 4 includes a rubber pad 20. (col. 3, 40-41).

The '421 patent, on the other hand, discloses a twin-headed toothbrush including a pair of discreet twin brushing heads attached, thorough two discrete neck segments, to a handle. (Abstract). The '421 also discloses that each head is connected to one neck to permit independent head flexure. (Abstract).

Thus, the teachings of the '510 patent and the '421 patent, analyzed individually, would simply be destroyed if combined. For example, the '510 patent teaches the use of a single brushhead and a single base in a replaceable head toothbrush, whereas the '421 patent teaches the use of a pair of discreet twin brushing heads and a pair of discreet neck segments in a twin-headed toothbrush. Accordingly, the '510 patent and the '421 patent, analyzed individually or in combination, disclose no motivation, suggestion, or teaching of making the claimed invention, and, as such, do not render the claimed invention unpatentable. Indeed, the Examiner recognized that the '421 patent, the base reference,

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does not disclose the claimed invention's handle including a cavity therein and resilient thumb contact inserted in the cavity.

As such, Applicant respectfully requests that the rejection of claim 2 under 35 U.S.C. § 103(a) be withdrawn. Independent claim 2 is allowable. In addition, its dependent claims are allowable for reasons of their dependencies, as well as their additional limitations.

4. Conclusion

In view of the above, the claims are now believed to be in form for allowance, and such an action is hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, he is requested to telephone the undersigned at the number below.

Attached hereto is a marked-up version of the changes made to the specification, and the claims by the current Amendment. The attached Appendix is captioned

"Versions with markings to show changes made."

Respectfully submitted,

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APPENDIX

VERSIONS WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

The specification is changed as follows:

Page 7, first paragraph:

The invention/device is wholly dependent on characteristics of necks 13L and 13R, and brush heads 14L and 14R to achieve the proper functioning in use, of the device. Moreover, the brush [can work (function) equally well with or without the use of] may include a cushioned insert 16 in the handle. The cushioned insert is shown in the embodiment of Figs. 1-3. The embodiments of Figs. 4 and 5 illustrate the invention without the use of [a] the cushioned insert 16.

IN THE CLAIMS:

Claim 1 is canceled.

The claims are amended as follows:

2. (Amended) A toothbrush comprising:

an elongated handle, shaped and dimensioned to be grasped by a human hand, having a first end and a second end, said elongated handle having a cavity open at a location where, when the elongated handle is grasped for using the toothbrush, the thumb of the human hand would normally contact;